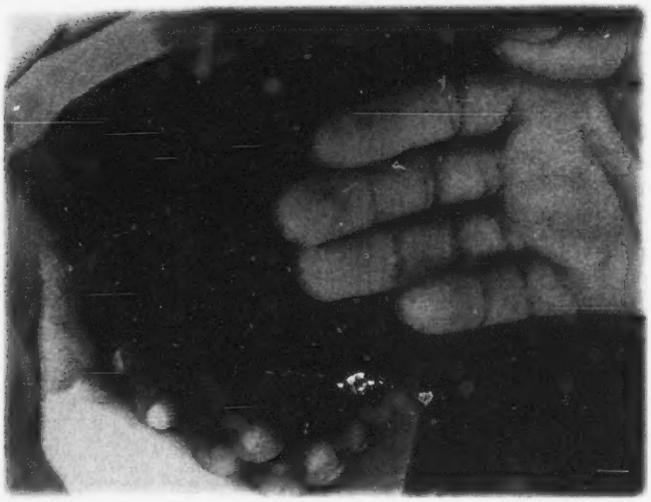
# Prince Edward Island
# Human Rights Commission

## 27th Annual Report

## 2009-2010



# Prince Edward Island
# Human Rights Commission

## 27th Annual Report

## 2009-2010

HUMAN RIGHTS

DROITS DE LA PERSONNE

## *Meet Our Staff and Commissioners*

*Photo: Brian Simpson, Provincial Photographer*

***Back Row:*** John Rogers, Commissioner
Anne Nicholson, Chair
George Lyle, Commissioner
Lou Ann Thomson, Commissioner
Arthur Currie, Commissioner

***Front Row:*** Lorraine Buell, Administrative/Intake Officer
Gregory J. Howard , Executive Director
Maria McQuaid, Human Rights Officer

***Cover Photo:*** Jana Mutch, Photographer
Photo taken in Lesotho in February 2009

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**Prince Edward Island Human Rights Commission**

53 Water Street, PO Box 2000, Charlottetown
Prince Edward Island C1A 7N8

**Commission des droits de la personne de l'Île-du-Prince-Édouard**

53, rue Water, C.P. Box 2000, Charlottetown
Île-du-Prince-Édouard C1A 7N8

August 11, 2010

The Honourable Doug Currie, Attorney General
Province of Prince Edward Island
PO Box 2000
Charlottetown PE C1A 7N8

Dear Minister:

***Re: Prince Edward Island Human Rights Commission 27th Annual Report 2009-2010***

On behalf of the staff and Commissioners of the Prince Edward Island Human Rights Commission, I am pleased to provide to you the Commission's Annual Report for the fiscal year 2009-2010.

We submit this report to you for presentation to the Legislative Assembly in accordance with section 22.1 of the Prince Edward Island *Human Rights Act* R.S.P.E.I. 1988, Cap. H-12 .

Should you or your staff have any questions or require any further information, please do not hesitate to contact me.

Sincerely,

Anne Nicholson
Chair

Tel/Tél. : 902 368 4180 Toll-free/Sans frais : 1 800 237 5031 Fax/Téléc. : 902 368 4236 *www.peihumanrights.ca*

## *Message from the Chair*

The past fiscal year ended on a high note when Canada ratified the UN Convention on the Rights of Persons with Disabilities. Human Rights Commissions across Canada, PEI included, have been urging this ratification since 2007 when Canada signed the Convention. The implications are widespread and should pave the way to building more inclusive and accessible communities and workplaces in PEI and the rest of Canada. We still have a long way to go to make sure that persons with disabilities and other marginalized groups can participate fully and live with dignity on PEI. Change in public understanding of our rights and responsibilities regarding human rights is essential.

The PEI Human Right Commission is mandated to enforce the Prince Edward Island *Human Rights Act* and to develop a program of public information and education in the field of human rights to proactively prevent human rights violations. While public education is a priority of the Commission, there is no longer an Education Officer. Therefore, the staff and Commissioners do their best to respond to requests for educational presentations while managing the work of the Commission, conducting panel hearings and writing decisions. We continue to appeal to the Provincial Government to reinstate our Education Officer (cut in the 2005-06 budget) but until that happens our prevention efforts are limited by resources.

On April 16, 2009, the Standing Committee of the Legislature responsible for Human Rights appointed two new Commissioners, Arthur Currie of Bonshaw and George Lyle of Summerside. They have both 'hit the ground running', providing excellent support with their financial and legal backgrounds. Acting Chair Ann Sherman completed her term in May 2009. On behalf of the staff and my fellow Commissioners I would like to thank Ann for her contribution to the Commission during her tenure and her strong leadership and support during her time as Acting Chair.

May 2009 also brought the end of Maurice Rio's term as Commissioner. He was a thoughtful and dedicated member of the team and will be missed. Chair Richard Montigny, who had been on leave for personal reasons since February 2009 submitted his resignation in November 2009. During his term as Chair, Richard launched the Annual Human Rights Award to celebrate the 60th Anniversary of the International Declaration of Human Rights on December 10, 2008. Richard made a significant contribution to Human Rights on PEI and I want to thank him for his dedication and service.

I would also like to thank David Larter who served as Executive Director from January 2008 to October 2009. David has accepted a position in Legal Services with the Provincial Government.

## *Message from the Chair*

In January, we welcomed Greg Howard back as Executive Director after a leave of absence to work in Bermuda. Greg brings with him new insight into the protection of human rights along with his extensive experience on PEI. We were very fortunate that Maria MacQuaid, Human Rights Officer, agreed to step in as acting Executive Director for the three month period before Greg returned to that position. Maria provided a seamless transition for the Commission. As always Lorraine Buell, our Administrative/Intake Officer, continues to provide strong, consistent and professional support to the Commission. This year Lorraine has also begun mediation training at UPEI. This training will allow the Commission to offer mediation to parties who are interested in that option.

In the Spring of 2009, we applied to the PEI Law Foundation and received funding to hire a summer student to complete research and update our educational material. The Commission hired Ian Parker, a law student at UNB, and his research provided us with support for the changes we are seeking to our legislation to improve our ability to carry out our mandate. The updated educational material has also been very helpful to staff and Commissioners when they make public presentations.

On December 10, International Human Rights Day, we held the Second Annual PEI Human Rights Award Ceremony. This celebration provides us with a rare opportunity to focus on the good work being done by volunteers to advance human rights on PEI. This year's recipients were Rev. Eric E. Fullerton, and Ray and Pat Malone for their pioneering work in advancing human rights in the GLBT community. It is with great sadness that I acknowledge the passing of Pat Malone in January 2010. Pat was a well-known social worker, community volunteer, Registered Nurse, Family Life Educator, Policy Analyst and Consultant. She was an activist for human rights and social change in many areas. Pat, along with her husband Ray and their friend Eric Fullerton, founded the PEI Chapter of Parents and Friends of Persons who are Lesbian and Gay (PFLAG). She will be warmly remembered and greatly missed.

It has been an honour to act as chair for the Commission from June 2009 until March 2010. In April 2010 the Legislative Assembly appointed me as Chair of the Commission for a three year term ending May 2013. I would like to thank the staff and Commissioners for their support and assistance and I look forward to working to advance human rights on PEI.

Anne Nicholson
Chair

## *Commissioners*

***The Commissioners are appointed by the Legislative Assembly on the recommendation of the Standing Committee on Health, Social Development and Seniors. They come from a variety of personal and professional backgrounds. Each brings experience and human rights expertise to decision-making, and provides leadership in setting the direction and promoting the work of the Commission.***

### Anne Nicholson, *Chair*

Anne Nicholson of St. Andrews Point, Lower Montague, was born in Montreal, Quebec, and moved to PEI in 1975. Commissioner Nicholson was appointed to the Commission on May 19, 2004, and reappointed on April 3, 2007. She assumed the role of Acting Chairperson in May 2009. As a consultant, she has worked with community groups on issues including health, culture, relationship violence prevention, and social justice. A graduate of UPEI, Anne chaired the PEI Advisory Council on the Status of Women, was Director of the PEI Rape/Sexual Assault Crisis Centre, and served on the Premier's Action Committee for Family Violence Prevention and the Community Foundation of PEI. She is Vice-chair of PEI Family Violence Prevention Services Inc. and Project Officer with Community Legal Information Association of PEI Inc. She is married to David Bergmark and they have three grown children, Dylan, Lukas and Chloe.

### Lou Ann Thomson, *Commissioner*

Lou Ann Thomson of Georgetown was appointed to the Commission on April 11, 2006, and reappointed for a second term which expires on April 18, 2011. She has served as a public health nurse in the Canadian North, practiced criminal law, and has served as a part-time member of the National Parole Board. She has experience and training in conflict resolution and has acted for a number of years as a volunteer mediator for youth offenders in the Restorative Justice Initiative in Nova Scotia. She received her Bachelor of Nursing at Dalhousie University and her Bachelor of Laws at Dalhousie Law School. She has a strong record of community involvement and has worked to bring diverse groups together to build a healthy community. After more than 40 years as a parent, a community volunteer, a nurse and a lawyer, she remains committed to promoting the dignity of all persons.

## *Commissioners*

### John Rogers, *Commissioner*

John Rogers of the Brae, P.E.I. was appointed to the Commission in 2008. Mr. Rogers holds a B.A. and B.Ed. from the University of Prince Edward Island and a M.Ed. from the University of Ottawa. He retired from the public school system in 2005 after serving as a teacher, vice-principal, and principal. At present, Mr. Rogers is employed as a sessional lecturer in the Faculty of Education at U.P.E.I. He also devotes time to the family farm in the Brae and serves on the Boards of a number of community organizations including the P.E.I. Potato Museum and Leard's Pond Environment Project Inc. Mr. Rogers continues to promote the principles of "fair treatment" and "equality of the individual" across this Province.

### George A. Lyle, *Commissioner*

George Lyle of Summerside was appointed Commissioner on April 16, 2009, for a three year term ending April 16, 2012. Mr. Lyle has been practising law as a general practitioner since October 1978 in the Province of Prince Edward Island and prior to that held various positions with the Guaranty Trust Company of Canada. He is a graduate of the University of Ottawa Law School and a certificate program in Trust Business from Queens University. During the period of his private practice of law in the Province of Prince Edward Island he held the position of Chairperson of the P.E.I. Labour Relations Board and is past President of the Law Society of Prince Edward Island and the P.E.I branch of the Canadian Bar Association. Mr. Lyle has served on various boards and has a strong community involvement in the City of Summerside. He is married and has four children.

## *Commissioners*

### Arthur Currie, Q.C., *Commissioner*

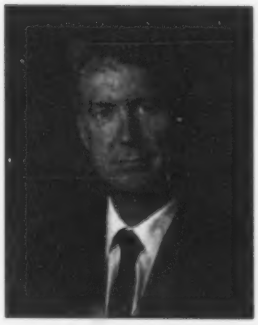
Arthur Currie, Q.C. of Argyle Shore was appointed Commissioner on April 16, 2009, for a three year term ending April 16, 2012. Art was born in St. Johns, Newfoundland. He has a BSc from Acadia University, a LLB from University of New Brunswick, and a LLM from New York University. Art has served as a Flying Officer (RCAF); Legal Counsel, Department of Justice and Attorney General, Government of Canada; Prothonotary, Supreme Court of PEI; Legal Counsel, PEI Department of Justice and Attorney General; Deputy Provincial Secretary, Province of PEI; Chief Electoral Officer, Province of PEI (1978-1986); Deputy Secretary to Cabinet for Intergovernmental Affairs; Deputy Minister of Justice and Deputy Attorney General (1981-1993); Principal of School of Justice and Director of the Atlantic Police Academy (1994-1996); and Member of Commission on PEI Electoral Future. Since 1987, Art has been an active volunteer and a member of the Board of Directors with PEI Volunteers for Literacy. Art and his wife, Barb, live on 30 acres on the Argyle Shore with a spectacular view of the Northumberland Strait. They have three children and six grandchildren. Art is dedicated to promoting equality and justice for all PEI citizens.

### Richard Montigny, *Past Chair*

Richard Montigny was appointed Commissioner on May 19, 2004, and appointed Chair on April 11, 2006. His term expired on May 19, 2010. Richard was born and raised in Charlottetown and educated at UPEI and Dalhousie University. He is employed with the Legislative Assembly. Mr. Montigny worked for many years as CEO with a PEI municipality and was instrumental in the formation of the PEI Council of Persons with Disabilities. He has served as Secretary-Treasurer of the PEI Cerebral Palsy Association, and is Chairman of the PEI Credit Union Deposit Insurance Corporation. Thank you, Richard, for your dedication and vast contributions to the Commission.

## *Staff*

*Executive Director:* Gregory J. Howard



Greg recently returned to the position of Executive Director of the Commission following a leave of absence to work in the Office of the Attorney General in Bermuda. He studied law at Dalhousie University and English and Education at Memorial University of Newfoundland. Greg is a member of the Law Society of Prince Edward Island and the Bermuda Bar Association. He was admitted to the Bar in 1991 and was in private practice until 1999, when he joined the Commission.

*Human Rights Officer:* Maria E. McQuaid

Maria was born and raised in Stratford, Prince Edward Island. She received a Bachelor of Arts (BA) degree from the University of Prince Edward Island in 2004 and a Bachelor of Laws (LLB) from the University of Ottawa in 2007, where she was a graduate of the French Common Law Program. Maria joined the Commission in January 2009. Prior to coming to the Commission, she articled and worked as Legal Counsel with the Law Branch of the Supreme Court of Canada. Maria is a member of the Law Society of Upper Canada and the Law Society of Prince Edward Island.

*Administrative/Intake Officer:* B. Lorraine Buell

Lorraine is the Commission's Administrative/Intake Officer, and a resident of Stratford, PEI. She is a current member of the Canadian Payroll Association, Council of Canadian Administrative Tribunals, International Association of Administrative Professionals, and is a Commissioner of Oaths. Lorraine is presently enrolled in the Conflict Resolution course at UPEI.

## *Summer Student*

*Summer Student:* Kathleen O'Neill

Kathleen is a summer student working at the PEI Human Rights Commission. She was born in New Glasgow, Nova Scotia, and moved to Charlottetown in April, 2010. Kathleen received her Bachelor of Arts degree in Human Rights and Political Science in 2009 from St. Thomas University, New Brunswick. We would like to take this opportunity to thank Kathleen for her assistance and hard work during her summer employment with the Commission.

The Commission would also like to thank the Law Foundation for the funding which enabled the employment of Ms. O'Neill to complete research and updates to human rights materials.

## *Powers and Duties of the Commission*

The Preamble to the *Human Rights Act* states that *"it is recognized that in Prince Edward Island as a fundamental principle that all persons are equal in dignity and human rights"*. Since the enactment of the *Human Rights Act* on September 11, 1976, the Prince Edward Island Human Rights Commission has been empowered to:

- administer and enforce the *Act*
- develop a program of public information and education in the field of human rights to forward the principle that every person is free and equal in dignity and rights.
- advise government on suggestions, recommendations and requests made by private organizations and individuals.
- report as required by the Minister on the business and activities of the Commission.
- consider, investigate or administer any matter or activity referred to the Commission by the Minister or the Lieutenant Governor in Council.

The *Human Rights Act* is deemed to prevail over all other laws of the Province.

A person may, within one year of an alleged incident, file a complaint with the Commission when he or she believes they have been discriminated against.

The complaint must fall within one or more of the areas covered by the Prince Edward Island *Human Rights Act*. The areas are:

***Accommodations, Services and Facilities***
***Lease or Sale of Property***
***Employment/Equal Pay***
***Membership in Employee or Professional Organizations***
***Advertisements and Publications***
***Volunteer Work***

The complaint must be based on one or more of the grounds covered by the Prince Edward Island *Human Rights Act*. The grounds of discrimination are:

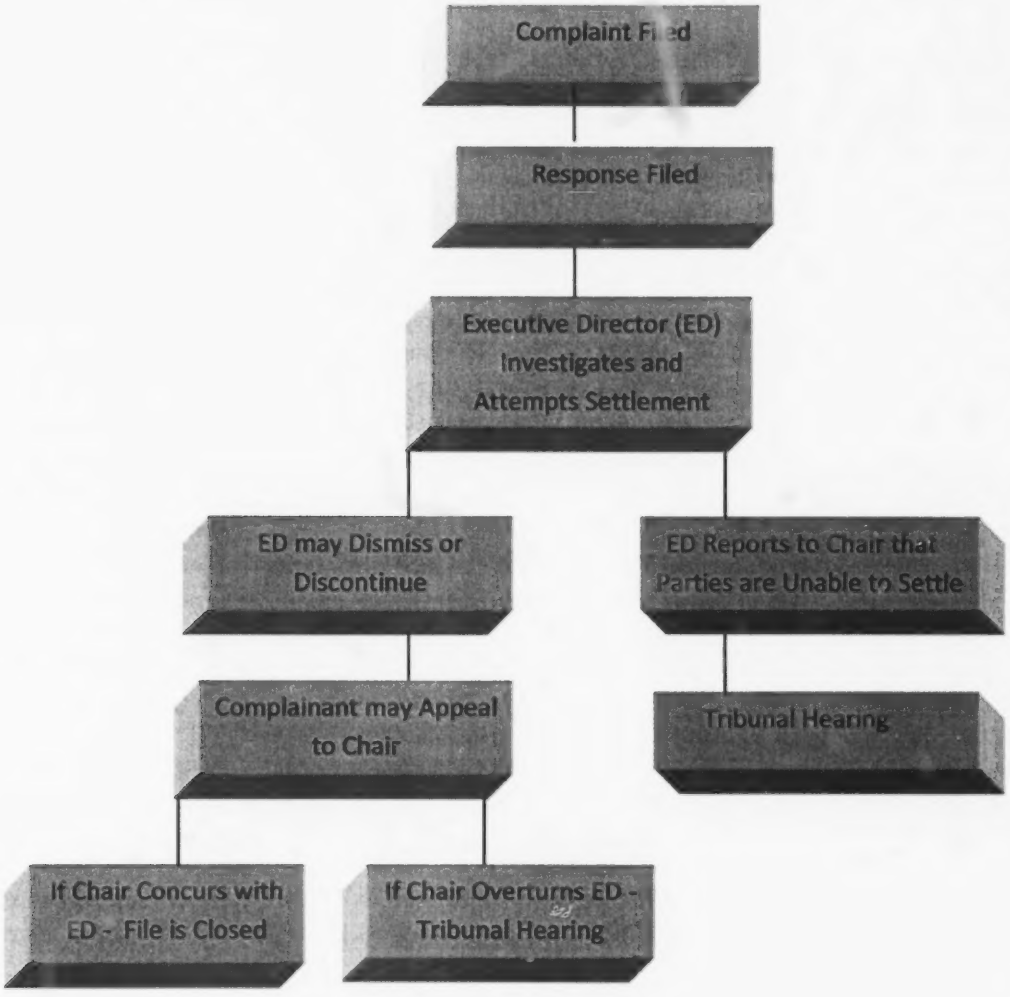
***Age***
***Colour***
***Creed***
***Ethnic or National Origin***
***Family Status***
***Marital Status***
***Physical or Intellectual Disability***
***Political Belief***
***Race***
***Religion***
***Sex***
***Sexual Orientation***
***Source of Income***

**Criminal Conviction** is a ground covered in the area of employment only.

**Association with an individual or group of individuals** is a ground that must be identified with one of the other grounds of discrimination.

Discrimination is prohibited against any individuals who **have filed complaints, or have given evidence/assistance during an investigation or at a human rights panel hearing.**

## Complaint Process


Complaint Filed
Response Filed
Executive Director (ED) Investigates and Attempts Settlement
ED may Dismiss or Discontinue
ED Reports to Chair that Parties are Unable to Settle
Complainant may Appeal to Chair
Tribunal Hearing
If Chair Concurs with ED - File is Closed
If Chair Overturns ED - Tribunal Hearing

## *Complaint Statistics*

There were a total of one hundred and six (106) formal complaints throughout this fiscal year. There were sixty four (64) unresolved complaints carried over from previous years, four (4) complaints were referred back to the Commission by the Courts and thirty eight (38) new complaints were filed in 2009-2010. In addition to written complaints, the Commission receives close to 1,500 phone inquiries annually from individuals concerned about their rights.

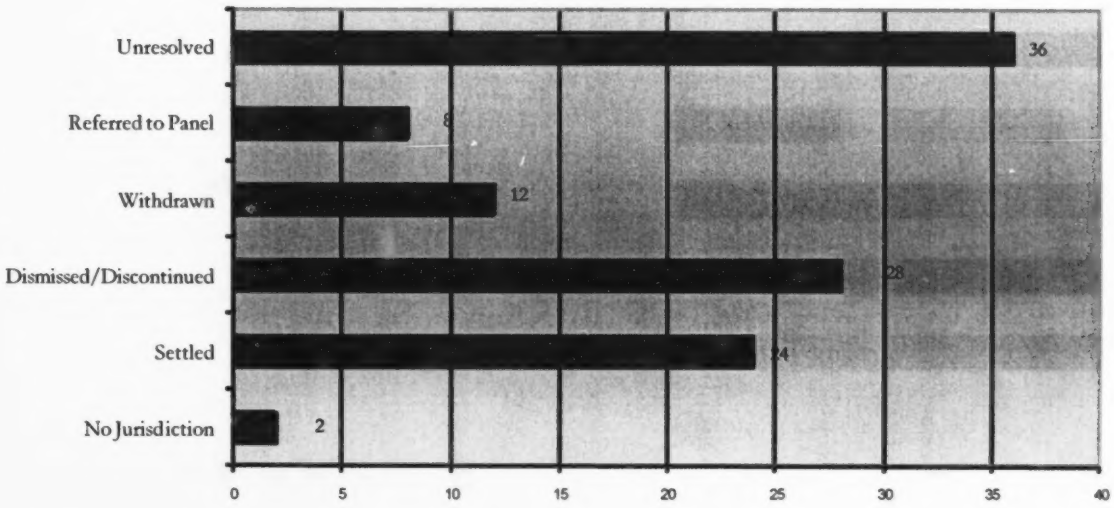
**NUMBER OF COMPLAINTS IN AREA AND GROUND**

| | Carried over from previous years | | Received in 2009-2010 | | |
|---|---|---|---|---|---|
| **Ground of Discrimination** | **Employment** | **Other Areas** | **Employment** | **Other Areas** | **Total** |
| Age | 8 | 1 | 4 | | 13 |
| Association | | | | | |
| Colour, Race, Ethnic/National Origin | 4 | 2 | 2 | 1 | 9 |
| Creed/Religion | 1 | | | | 1 |
| Criminal Conviction | 1 | | | | 1 |
| Family Status | | 1 | | | 1 |
| Marital Status | | | | | |
| Physical/Intellectual Disability | 18 | 4 | 8 | 2 | 32 |
| Political Belief | 6 | | 1 | | 7 |
| Sex/Gender (including Pregnancy and Harassment) | 8 | 2 | 10 | 2 | 22 |
| Sexual Orientation | 1 | | | | 1 |
| Source of Income | | 1 | | 1 | 2 |
| Filing a Complaint/Giving Evidence | 1 | | | | 1 |
| Multiple Grounds | 6 | 3 | 4 | 3 | 16 |
| **Total Number of Complaints** | **54** | **14** | **29** | **9** | **106** |

As in previous years, most complaints arise in the area of employment, while the most common ground of discrimination is physical/intellectual disability.

During the 2009-2010 fiscal year, twelve complaints were withdrawn, twenty eight complaints were dismissed or discontinued, ten complainants requested a review by the Chair, twenty four complaints were settled and eight complaints were referred to a panel hearing. Four of the matters referred to hearing reached a settlement prior to the hearing. Two complaints were deemed not to be within the jurisdiction of the Prince Edward Island Human Rights Commission. At year end, thirty six complaints in various stages of the complaint process were carried over to the next fiscal year.

**Complaint Outcomes**
**April1, 2009- March 31, 2010**




***Unresolved:*** Complaints under investigation, undergoing settlement negotiations or awaiting a panel hearing.

***Panel:*** Complaints that went to or were referred to a panel hearing.

***Withdrawn:*** Complaints withdrawn by complainant or complaints considered withdrawn as complainant cannot be reached.

***Dismissed or Discontinued:*** Complaints dismissed or discontinued by Executive Director or Chairperson as set out in the *Act* (s.22(4)).

***Settled:*** Complaints settled without going to a panel hearing.

***No Jurisdiction:*** Complaints filed that did not fall under the jurisdiction of the PEI *Human Rights Act*, including those complaints filed outside the one year limitation period.

## *Settlements*

The Executive Director has a statutory mandate to "investigate and attempt to effect settlement" of human rights complaints. The following summaries are examples of some of the human rights complaints that were settled during the 2009-2010 fiscal year:

***Employment - Disability***
A food-service worker went on sick leave due to depression. The worker was late providing a second note from his treating physician extending the sick leave. As a result of the late-filed report, the employer considered that the employee had voluntarily terminated his employment. The general rule governing such cases is that the employer has a duty to accommodate the employee's medical condition to the point of undue hardship. In this case the employer had an obligation to attempt to contact the employee before terminating the employment. In a settlement reached by the parties, the employer agreed to pay to the Complainant Six Thousand Dollars ($6,000) in general damages.

***Employment - Colour, Race and Ethnic or National Origin***
A First Nations woman alleged discrimination on the basis of colour, race and ethnic or national origin. The employee alleged that the employer subjected her to harassing comments and actions that targeted her First Nations heritage. The employee advised the employer that she took offense to his comments and actions, but the employer failed to cease the behaviour. The parties reached a settlement that provided for the employer to provide an harassment free work place and, when advised of harassment, to take steps to address the situation immediately. The employer agreed to pay the complainant Four Thousand Dollars ($4,000) in general damages, to provide a letter of reference and a letter of apology, and to participate in sensitivity training.

***Employment - Criminal Conviction***
The Complainant worked at a food processing plant and was dismissed after the employer became aware of the employee's past criminal conviction. The investigation revealed that the conviction some years ago, for which the employee had completed a lengthy term of imprisonment, was unrelated to his job duties. As a general rule an employer does not have the right to dismiss an employee for a criminal conviction unless the conviction is related to the duties of the employee's position. In a settlement reached by the parties, the employer agreed to pay the Complainant a modest sum of general damages and permitted him to resume his duties.

***Employment - Sex/Pregnancy***

During her probationary period, an employee advised her employer that she was pregnant and would be unable to work her full shift requirements due to medical complications relating to her pregnancy. The employer responded by dismissing her from her employment. An employer has a duty to accommodate the medical needs of an employee who is pregnant and an obligation to keep a position available for her when she is ready to return from maternity leave. While the employer believed that the employee ought to have disclosed the pregnancy during the hiring process, the failure to do so does not relieve the obligation of the employer to accommodate the employee to the point of undue hardship. In a settlement reached by the parties, the employer agreed to pay the Complainant Two Thousand Six Hundred Seventy Two Dollars ($2,672) in general damages and to reinstate the Complainant to her position.

***Employment - Sex/Gender***

A female employee was employed at a work site that used heavy equipment. Although she was not hired in a position that involved operating the equipment, she was temporarily filling a position that required operating the equipment. The employee applied for the position that she had been filling temporarily, however, the employer hired a male who was no better qualified for the position. In a settlement reached by the parties, the employer agreed to pay the Complainant Fifteen Thousand Dollars ($15,000) in general damages.

***Services - Sexual Harassment***

A woman filed a complaint in the area of services and facilities available to the public alleging discrimination on the basis of sexual harassment. The Complainant was enrolled as a student in a training course and was subjected to harassing comments and actions by the instructor. The institution's manager, when advised of the harassment, failed to take any action to rectify the situation. As a result of the harassment, the student was unable to complete the training program and receive the training certificate. In a settlement reached by the parties, the Respondent agreed to pay a sum of general damages, to reimburse the Complainant's tuition, to provide a letter of apology, to have its sexual harassment policy reviewed by the Human Rights Commission, and to participate in sensitivity training.

***Nilsson, Wills and Fell v. University of Prince Edward Island***

Three complaints were referred to a Human Rights Panel (the "Panel") to consider whether the mandatory retirement policy imposed on employees of the University of Prince Edward Island (the "University") at age 65 constituted discrimination the basis of age. Two of the complainants, Thomy Nilsson and Richard Wills, were members of the University faculty and the other complainant, Yogi Fell, was an employee of the University.

On May 7, 2007, the Panel convened to hear submissions on preliminary issues. On August 1, 2007, the Panel rendered a decision adding the University of Prince Edward Island Faculty Association ("Faculty Association") as a party Respondent; allowing the Canadian Union of Public Employees, Local 1870 ("CUPE") the opportunity to participate as an intervenor; and deciding that Ms. Fell's complaint as it related to sex or gender discrimination be held in abeyance until the age-based complaints were decided.

The University subsequently filed an application for judicial review of the Panel's decision. Among the preliminary issues was a request by the University that CUPE be added as a party Respondent to the proceedings. In its judicial review application, the University sought an order nullifying the Panel's decision to not add CUPE as a party Respondent. The judicial review was heard on October 7, 2008, and a decision was rendered on January 15, 2009. The Supreme Court of Prince Edward Island found that the decision of the Panel was in error and directed the Panel to add CUPE as a party Respondent.

The Panel reconvened for the hearing on October 13, 14, 15, 19, 20, 21, 26 and 27, 2009. In a decision dated February 18, 2010, the Panel found that the mandatory retirement of the Complainants at age 65 constituted discrimination and that the University failed to establish that the age discrimination was justified by the exceptions under ss. 6(4)(a), 11 and 14(1)(d) of the *Human Rights Act*, R.S.P.E.I. 1988, Cap. H-12. The Panel further found that the University was solely liable for the damages suffered by the Complainants. On March 16, 2010, the University filed an application for judicial review of the Panel's decision. The hearing of the judicial review application has not yet been scheduled.

On June 4, 2010, the Panel rendered its decision on remedies ordering the University to do the following: cease the contravention complained of and refrain from committing the same or similar contravention in the future; reinstate the Complainants Nilsson and Wills to their former positions with tenure and reinstate the Complainant Fell to a comparable position; provide monetary compensation plus interest to each Complainant for loss of income and general damages; reinstate each Complainant to the University's Pension Plan; provide a sum for income tax gross up where entitled; and pay costs to the Complainants, the Faculty Association, and CUPE.

***Ayangma* v. *Eastern School Board***

On December 8, 2005, a Human Rights Panel (the "Panel") issued a decision finding that Mr. Ayangma had been discriminated against by the Eastern School Board (the "Board") on the basis of his race, colour, ethnic and national origin, and age. The Panel ordered the Board to pay to Mr. Ayangma $55,000 plus interest for lost wages, and a further $6,000 for hurt and humiliation.

The Board filed an application for judicial review of this decision and Mr. Ayangma also applied for further relief. Upon its review of the Panel's decision, the Prince Edward Island Supreme Court upheld the decision, and dismissed both parties' applications to vary the Panel decision.

Mr. Ayangma appealed on the issue of damages. The appeal and the Board's cross-appeal were heard by the Court of Appeal on January 24 and 25, 2008. The Court rendered its decision on July 4, 2008, allowing the appeal in part and varying the order of the applications judge in the following respects:

(1) The decision of the Panel to reduce the appellant's compensation for loss of income by $13,654.06 was set aside and the respondent ordered to pay this amount to the appellant, together with interest in accordance with the *Supreme Court Act* R.S.P.E.I. 1988, Cap. S-10 from September 1, 1997 to the date of payment;

(2) The respondent was ordered to pay the reasonable costs of the appellant's travel, accommodations and food in relation to his travel between Charlottetown and Halifax. The issue was referred back to the panel for the assessment of these costs;

(3) The appellant was awarded a portion of the costs of presenting his case to the panel;

(4) The appellant was awarded the sum of money necessary for any income tax gross up;

(5) The appellant was entitled to a letter of apology;

(6) The hiring policies of the respondent as well as its cultural and diversity policies are to be reviewed by the Panel;

(7) The respondent shall communicate this decision in accordance with these reasons.

Items (2) and (3) were dealt with by agreement between the parties and by a Consent Order of Chief Justice Matheson of the Supreme Court of Prince Edward Island. Items (4) through (7) were dealt with by the Panel. On January 30, 2009, the Board issued a letter of apology to Mr. Ayangma. On February 19, 2009, the Board confirmed that it had prepared a summary of the Court's decision and communicated the summary to all its teaching staff as per the Court's order. On April 6, 2009, the Panel made recommendations to the Board to revise and expand its policies on employment, harassment, and cultural and linguistic diversity.

On March 30, 2010, the Panel determined that Mr. Ayangma was not entitled to income tax gross up.

***Ayangma v. Canada Health Infoway Inc.***
On May 2, 2006, Mr. Ayangma filed a complaint alleging discrimination in employment on the basis of race, colour and ethnic or national origin. The complaint was dismissed on June 11, 2007 as being outside the jurisdiction of the Prince Edward Island Human Rights Commission. Mr. Ayangma requested reconsideration by the Chairperson of the Commission who, on April 2, 2007, concurred with the decision to dismiss. Mr. Ayangma then applied for judicial review of the Chairperson's decision. The judicial review hearing took place on April 17, 2009. In a decision dated August 14, 2009, the Supreme Court of Prince Edward Island concluded that the Commission had jurisdiction to consider the complaint and remitted the matter back to the Commission for investigation.

This matter is presently in investigation.

***Deborah J. Kelly (Hawkes) v. Welfare Assistance Appeal Board***
On June 5, 2003, Ms. Kelly file a complaint alleging discrimination in the area of services on the basis of her source of income. The complaint was subsequently amended to add the ground of marital status. In a separate complaint filed on September 17, 2003, Ms. Kelly added the grounds of association, sexual orientation and political belief. The Executive Director dismissed both complaints on August 26, 2004. Ms. Kelly requested that the decisions be reviewed by the Chairperson of the Commission. The Chairperson upheld the decision of the Executive Director. Ms. Kelly then made application for judicial review. Following a motion by Ms. Kelly for the separation of the complaints and appeals of the decision dismissing her motion, the judicial review was held on February 27, 2009. A decision dated May 14, 2009 allowed the application for judicial review and directed the Chairperson of the Commission to establish a Panel of Inquiry. Ms. Kelly appealed the Court's decision. The appeal hearing was held on January 19, 2010. The Court of Appeal released its decision, dismissing the appeal, on March 16, 2010.

The Panel Hearing has not yet been scheduled and Ms. Kelly has since filed an application for leave to appeal in the Supreme Court of Canada.

***Deborah J. Kelly (Hawkes) v. Social Assistance Appeal Board***
Ms. Kelly filed a complaint on September 20, 2004, alleging discrimination in the area of employment and services on the basis of association, sexual orientation, source of income and political belief. The Executive Director dismissed the complaint on November 7, 2005. Ms. Kelly requested that the decision be reviewed by the Chairperson of the Commission who in a decision rendered on February 16, 2006, concurred with the decision of the Executive Director. Ms. Kelly then filed an application for judicial review. The Court granted the application for judicial review in part and awarded costs to Ms. Kelly in the amount of Two Hundred Dollars and ordered the complaint be remitted back to the Commission for investigation. The Executive Director Delegate dismissed the complaint on October 30, 2008. Ms. Kelly requested a review of that decision. Upon review, the Chairperson concurred with the decision of the Executive Director Delegate. Ms. Kelly filed an application for judicial review and the hearing was held on January 13, 2010.

The Court dismissed Ms. Kelly's application.

***Deborah J. Kelly (Hawkes) v. Prince Edward Island Human Rights Commission***
On June 8, 2006, Ms. Kelly filed a complaint alleging discrimination in the area of employment on the basis of association and sexual orientation. On June 29, 2007, the complaint was dismissed by the Executive Director who found there was insufficient evidence of discrimination to warrant sending the matter to a public inquiry. Ms. Kelly's request for review by the Chairperson of the Commission was also dismissed. Ms. Kelly made application for judicial review. In the judicial review application, Ms. Kelly named the Attorney General of PEI as a party. The Attorney General subsequently brought a motion to have the application for judicial review struck as against it and that motion was granted on February 25, 2009. Ms. Kelly brought a motion at the same time seeking disclosure by the Commission of documents relating to the job competition as well as disclosure of the Executive Director's notes. The Commission consented to release of the documents relating to the job competition. The part of the motion relating to Executive Director's notes was dismissed on February 25, 2009. The application for judicial review was dismissed on June 1, 2009. Ms. Kelly appealed the decision.

The appeal hearing took place on April 14, 2010 and the Court rendered an oral decision dismissing the appeal. The Court provided written reasons on April 15, 2010. Ms. Kelly has filed an application for leave to appeal in the Supreme Court of Canada.

***Nancy Wood v. Government of Prince Edward Island***
On August 2, 2007, Ms. Wood filed a complaint alleging discrimination in the area of employment on the basis of disability. On November 3, 2008, the complaint was dismissed by the Executive Director who found that the Respondent reasonably accommodated the Complainant and therefore the Respondent's duty was discharged. Ms. Wood requested a reconsideration by the Chairperson of the Commission who, in a subsequent decision, concurred with the decision of the Executive Director. On April 7, 2009, Ms. Wood filed an application for judicial review.

The hearing of the judicial review application had not yet been scheduled.

***Linda Toole v. East Prince Health***
On October 4, 2006, Ms. Toole filed a complaint alleging discrimination in the area of employment on the basis of sex/gender. On February 4, 2009, the complaint was dismissed by the Executive Director who found there was insufficient evidence of discrimination to warrant sending the matter to a public inquiry. Ms. Toole requested a reconsideration by the Chairperson of the Commission who, in a subsequent decision, concurred with the decision of the Executive Director. On June 8, 2009, Ms. Toole filed application for judicial review.

The judicial review hearing has not yet been scheduled.

***PEI Music and Amusement Operators Association Inc. et al v. Government of Prince Edward Island***

On April 16, 2007, the Complainants filed a complaint alleging discrimination in the area of employment on the basis of political belief. On January 23, 2009, the complaint was dismissed by the Executive Director who found the complaint to be outside the one year limitation period for filing a complaint. The Complainants requested a review by the Chairperson of the Commission who, in a subsequent decision, concurred with the decision of the Executive Director. On May 25, 2009, the Complainants filed an application for judicial review. The hearing of the judicial review application was held on March 8, 2010.

The Court has not yet rendered a decision.

***David Dodds v. Prince Edward Island Human Rights Commission and Legal Aid***

On March 4, 2008, Mr. Dodds filed a complaint alleging discrimination in the area of services and facilities available to the public on the basis of colour, race and ethnic or national origin, creed or religion, physical or mental disability, sex or gender, and source of income. On June 11, 2009, the complaint was dismissed by the Executive Director who found the complaint to be outside the one year limitation period for filing a complaint. Mr. Dodds requested a review by the Chairperson of the Commission. The Chairperson Delegate, in a subsequent decision, concurred with the decision of the Executive Director. On September 23, 2009, Mr. Dodds filed an application for judicial review.

The hearing of the judicial review application has not yet been scheduled.

## *Human Rights Award*

*Reverend Eric Fullerton, Ray Malone (missing from photo Pat Malone) with Acting Chair Anne Nicholson*

In 2009, the Prince Edward Island Human Rights Commission presented its second annual Human Rights Award for the Advancement of Human Rights on PEI. The award was presented in conjunction with the celebration of International Human Rights Day on December 10, 2009. The Commission created the Award to recognize individuals, groups or organizations that have made significant contributions toward the advancement of human rights on Prince Edward Island.

The recipient of the Award is selected based on exceptional achievement on a volunteer basis in promoting human rights and equality in Prince Edward Island.

The recipients of the 2009 award were Reverend Eric G. Fullerton and Ray and Pat Malone. The Award was presented by Acting Chair Anne Nicholson.

Eric Fullerton and Pat and Ray Malone made a significant contribution to the advancement of Human Rights on PEI, in particular, the rights of persons who are Gay, Lesbian, Bisexual, Transgender, and Two-Spirited (GLBT).

In 2004 and 2005 the Malones presented a series of workshops called, "Creating Safe Communities" in Summerside and Montague. During these workshops members of the GLBT community told their stories of growing up with homophobia, prejudice, anger, hatred and discrimination based solely on their sexual orientation. Participants were shocked to hear of such hatred on PEI.

They have held open meetings and public events to bring the fight for equality for the GLBT community and their families to the attention of Islanders.

In 2006 Pat and Ray gave a workshop at the PEI Teachers' Convention. During the workshop, they shared and demonstrated lesson plans and teaching concepts to help schools deal with homophobia in schools.

Ray and Eric accepted the award on behalf of Pat who was very ill. We were saddened to hear of Pat's death in January 2010.

Please see our website for information on the criteria for this year's award to be presented on Friday, December 10, 2010.

**AUDITOR GENERAL**

**CHARLOTTETOWN**

**PRINCE EDWARD ISLAND**

**PRINCE EDWARD ISLAND**

**HUMAN RIGHTS COMMISSION**

**FINANCIAL STATEMENTS**

**MARCH 31, 2010**

## AUDITOR GENERAL

CHARLOTTETOWN
PRINCE EDWARD ISLAND

### AUDITOR'S REPORT

To the Commissioners of the
Prince Edward Island Human Rights Commission

I have audited the statement of financial position of the Prince Edward Island Human Rights Commission as at March 31, 2010 and the statement of operations and changes in net assets for the year then ended. These financial statements are the responsibility of the Commission's management. My responsibility is to express an opinion on these financial statements based on my audit.

I conducted my audit in accordance with Canadian generally accepted auditing standards. Those standards require that I plan and perform an audit to obtain reasonable assurance whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation.

In my opinion, these financial statements present fairly, in all material respects, the financial position of the Commission as at March 31, 2010 and the results of its operations for the year then ended in accordance with Canadian generally accepted accounting principles.

Colin Younker, CA
Auditor General

Charlottetown, Prince Edward Island
April 27, 2010

## PRINCE EDWARD ISLAND HUMAN RIGHTS COMMISSION

## STATEMENT OF FINANCIAL POSITION

## MARCH 31, 2010

| | 2010 | 2009 |
|---|---|---|
| **ASSETS** | | |
| **Current Assets** | | |
| Cash | $ 9,827 | $11,461 |
| Accounts receivable | 943 | 850 |
| Prepaid expenses | 898 | 1,179 |
| | $11,668 | $13,490 |
| **LIABILITIES AND NET ASSETS** | | |
| **Current Liabilities** | | |
| Accounts payable and accrued liabilities | $ 9,114 | $11,585 |
| **Net Assets** | 2,554 | 1,905 |
| | $11,668 | $13,490 |

(The accompanying notes are an integral part of these financial statements.)

SIGNED ON BEHALF OF THE COMMISSION:

COMMISSIONER: _____

COMMISSIONER: _____

AUDITOR GENERAL - CHARLOTTETOWN, PEI

## PRINCE EDWARD ISLAND HUMAN RIGHTS COMMISSION

## STATEMENT OF OPERATIONS AND CHANGES IN NET ASSETS

## FOR THE YEAR ENDED MARCH 31, 2010

| | 2010 | 2009 |
|---|---|---|
| **Revenues** | | |
| Provincial grant | $376,476 | $329,300 |
| Other grants | 7,000 | - |
| | 383,476 | 329,300 |
| **Expenses** | | |
| Commissioners' per diems - Note 5 | 47,796 | 24,865 |
| Conferences and training | 8,224 | 3,225 |
| Furniture and equipment - Note 2 | 3,934 | 5,068 |
| Memberships | 2,984 | 2,865 |
| Miscellaneous | 2,742 | 5,322 |
| Office maintenance, supplies, subscriptions and special projects | 9,625 | 10,553 |
| Photocopying | 3,145 | 2,695 |
| Professional fees | 30,544 | 525 |
| Rent | 19,600 | 20,283 |
| Salaries and benefits - Note 6 | 233,016 | 233,052 |
| Travel - staff | 5,980 | 4,725 |
| - commissioners | 11,446 | 9,474 |
| Telephone | 3,791 | 4,743 |
| | 382,827 | 327,395 |
| Excess revenues for the year | 649 | 1,905 |
| Net assets, beginning of year | 1,905 | - |
| Net assets, end of year | $ 2,554 | $ 1,905 |

(The accompanying notes are an integral part of these financial statements.)

AUDITOR GENERAL - CHARLOTTETOWN, PEI

**PRINCE EDWARD ISLAND HUMAN RIGHTS COMMISSION**

**NOTES TO FINANCIAL STATEMENTS**

**MARCH 31, 2010**

1. **Purpose of the Organization**

   The P.E.I. Human Rights Commission is a corporate body under section 16.(1) of the *Human Rights Act* of Prince Edward Island. The Commission is responsible for administering, enforcing the *Human Rights Act* and providing education and public information in the field of human rights. The Commission also inquires into and endeavours to effect a settlement of any complaint of a violation of the *Human Rights Act* filed with the Commission as prescribed by the Act. The Commission is a non-taxable entity under the provisions of the *Income Tax Act*. Its financial results are included in the Public Accounts of the Province of Prince Edward Island.

2. **Basis of Accounting**

   The financial statements of the Commission have been prepared in accordance with Canadian generally accepted accounting principles for not for profit organizations. The following is a summary of the significant accounting policies used in the preparation of these financial statements.

   **Summary of Significant Accounting Policies**

   **Revenue Recognition**
   The Commission follows the deferral method of accounting for grants.

   **Expense Recognition**
   Expenses are recognized using the accrual basis of accounting.

   **Furniture and Equipment**
   Office equipment, furniture and computer software are expensed in the year acquired. Furniture and equipment expensed for the year ended March 31, 2010 totalled $3,934 (2009 - $5,068)

3. **Financial Instruments**

   All financial instruments reported on the balance sheet of the Commission are classified as follows:

   Cash - Held for trading
   Accounts receivable - Loans and receivables
   Accounts payable - Other liabilities

   Due to their nature, all financial instruments are considered to be carried at amounts which approximate their fair value.

AUDITOR GENERAL - CHARLOTTETOWN, PEI

PRINCE EDWARD ISLAND HUMAN RIGHTS COMMISSION

NOTES TO FINANCIAL STATEMENTS

MARCH 31, 2010

4. Lease Commitment

The Commission has entered into operating leases with future minimum lease payments as follows:

| Fiscal Year | |
|---|---|
| 2010/11 | $22,008 |
| 2011/12 | 7,308 |
| 2012/13 | 2,400 |
| 2013/14 | 1,204 |
| | $32,920 |

5. Commissioner Per Diems

Commissioner per diems include panels of inquiry, meetings, education presentations, training and seminars and other Commission business.

6. Salaries and Benefits

a) Pension Costs

The employees of the Commission participate in a defined contribution pension plan. The Commission makes contributions amounting to 6.95% on that part of the salary on which Canada Pension Plan contributions are made and 8.75% on salary when Canada Pension Plan contributions are not required. The employee is not required to match or contribute to the plan. These contributions are paid to a Registered Retirement Savings Plan (RRSP) as selected by the employee.

b) Vacation Pay and Retirement Allowances

Vacation pay is recorded as a liability when earned. For the year ended March 31, 2010 the vacation accrual was $3,890 (2009 - $4,450). Liabilities for retirement will be funded and recognized by the Province.

7. Cash Flow Statement

The Commission has not included a statement of cash flows as a part of its financial statements as the information is readily apparent from the other financial statements.

AUDITOR GENERAL - CHARLOTTETOWN, PEI

**The Prince Edward Island Human Rights Commission is an independent body that investigates, attempts to settle and makes rulings on complaints of discrimination that fall under the Prince Edward Island *Human Rights Act***

**For more information, please contact us**


**In Person:**
53 Water Street
Charlottetown PE C1A 1A3

**By Mail:**
Prince Edward Island Human Rights Commission
PO Box 2000
Charlottetown PE C1A 7N8

**By Phone:**
(902)368-4180 or
1-800-237-5031
(toll-free within Prince Edward Island)

**By Fax:**
(902)368-4236

**By E-mail:**
lbuell@peihumanrights.ca

**or visit our website:**
www.peihumanrights.ca